IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 38 of 1990

For Approval and Signature:

Hon'ble MR.JUSTICE A.L.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements?

2. To be referred to the Reporter or not?

3. Whether Their Lordships wish to see the fair copy of the judgement?

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?

5. Whether it is to be circulated to the Civil Judge?

GANGADHAR YASHVANT RAMEKAR

Versus

MUKESHBHAI B SHAH

Appearance:

MR PRANAV G DESAI for Petitioner

MR AKSHAY H MEHTA for Respondent No. 1

MR KM PARIKH for Respondent No. 2

MR AJ DESAI, APP, for Respondent No. 3

CORAM : MR.JUSTICE A.L.DAVE

Date of decision: 30/09/98

ORAL JUDGEMENT

1. This appeal arises out of the judgment and order of learned Judicial Magistrate, First Class (Municipal), Vadodara, rendered by him in Criminal Case No.4815 of 1983, on 29th August, 1988, recording acquittal of respondents No.1 and 2 for the offences under Sections

2(1A), 7(1) and 16(1) of the Prevention of Food Adulteration Act, 1954, with which they were charged. Being aggrieved by the said judgment and order, the Food Inspector, Vadodara, who was the original complainant, has preferred this appeal.

2. FACTS

2.1 The appellant-Gangadhar Yashvant Ramekar was, around 3rd June, 1983, working as Food Inspector with Vadodara Municipal Corporation. On that day, at about 10.30 in the morning, he visited Hathlaari Provision Stores of respondent No.1, who was trading in grocery. He introduced himself to respondent and told him that he has come for inspection and wants to take sample of groundnut oil. He called a Panch witness and, in his presence, he purchased 375 grams of groundnut oil, after following the procedure as laid down by the Prevention of Food Adulteration Act (hereinafter referred to as "the Act"). The price for the said sample was paid to respondent No.1. Respondent No.1 informed that, he had purchased the groundnut oil from present respondent No.2-Nandkishore Natvarlal of Natvar Oil Depot of Baroda. After following the procedure for preparing three separate samples and sealing, the complaint sent the same for analysis to the Public Analyst. Upon receiving the report of the Public Analyst, notice as required under Section 13(2) of the Act was sent and complaint was lodged against respondents No.1 and 2 before the Judicial Magistrate, First Class (Municipal), Baroda. At the trial, both the respondents, who were accused therein, pleaded not guilty and the trial was proceeded against them. After the trial was over, respondents No.1 and 2 came to be acquitted by the impugned judgment and order, considering the evidence on record by the learned Judicial Magistrate, First Class, which is the subject matter of challenge before this Court.

3. Mr. Pranav G. Desai, learned Advocate appearing for the appellant, submitted that the learned Judicial Magistrate, First Class has disbelieved the case of the complainant mainly on the ground that the sanction/permission given in the instant case for prosecution, as envisaged under Section 20 of the Act, cannot be considered as legal and proper, and that the requirements of Section 13, subsection (2) of the Act have not been complied with vis-a-vis accused No.2. Mr. Desai submitted that both these conclusions are the result of erroneous interpretation of evidence and law. The question of the sanction being defective has now been settled by the Supreme Court in the Case of S.S. Rajput v. Bhartiben Pravinbhai Soni & Ors., (1996) 7 SCC 199.

He Submitted that, in the case before the Supreme Court, identical sanction was the matter of dispute arising out of a case from the same Municipal Corporation and the Honourable Supreme Court has come to a conclusion that the sanction is valid. He has taken this Court through that decision, wherein the sanction letter is reproduced and has tried to show that the sanction letter in that case and the sanction letter in the instant case before this Court are identical. He, therefore, urged that, on that count, the verdict of the learned Magistrate is erroneous and cannot be sustained.

3.1 As regards non-compliance of Section 13(2) of the Act, Mr. Desai submitted that, so far as respondent No.1-original accused No.1 is concerned, even the learned Magistrate has held that there is sufficient compliance thereof. So far as accused No.2-present respondent No.2 is concerned, if the provisions of Section 13(2) and Rule 9(a) are read together, it makes it clear that the duty that is cast on the complainant is only to send a copy of the report of the Public Analyst and it is not necessary for the prosecution to prove that it was duly received by the addressee. It is immaterial whether that is received or not. Mr. Desai submitted that no prejudice is caused to the interest of accused No.2 as accused No.2 could have very well availed of his opportunity of getting the sample examined by the Central Food Laboratory even at the time of the trial and, therefore, unless prejudice is shown, simply because proof of receipt is not brought on record, the prosecution must not suffer. In this regard, Mr. Desai has placed reliance on the decision of the Kerala High Court in the case of Food Inspector v. P.N. Muthu and Company, 1986 FAJ 490. Mr. Desai submitted that, in light of this decision, the learned Magistrate has committed an error of fact and law. The decision of the learned Magistrate is, therefore, erroneous. The appeal, therefore, needs to be allowed and the acquittal needs to be set aside while recording conviction of the respondents.

4. Mr. Akshay H. Mehta, learned advocate appearing for respondent No.1, submitted that, he does not agitate the validity of the sanction in view of the Supreme Court decision. So far as compliance of Section 13(2) is concerned, there also, he does not agitate the finding of the learned Magistrate. But, according to Mr. Mehta, there are certain other aspects of the case which seriously reflect upon the veracity of the prosecution case and thereby hit at the very root of the prosecution case.

4.1 Mr. Mehta has assailed the procedure followed by the complainant while taking sample and sealing the sample. According to Mr. Mehta, mandatory requirements relating to sampling and sealing have not been adhered to. He has taken this Court through the evidence of the complainant. He argued that the evidence regarding the bottles in which the samples were taken, their cleaning and drying is not sufficiently proved. Provisions of Rule 16 of the Prevention of Food Adulteration Rules, 1955 (hereinafter referred to as "the Rules") are, therefore, violated. He submitted that the wrapping of the bottle after taking the sample and "neatly folding" of the ends of the paper has not been properly brought on record, as it is not so deposed to by the witness. He submitted that, Rule 14 requires that the bottles in which the samples are to be taken must be properly cleaned and dried. The evidence of the complainant indicates that he had collected these bottles from the stores and he had no personal knowledge as to when and by whom the bottles were cleaned. The Panch witness in whose presence the sample is taken also could not have verified the condition of the bottle from within, for the reason that when it was shown to him, the cork was not open. Mr. Mehta has placed reliance on an unreported decision of this High Court in Criminal Appeal No.1013 of 1988, rendered on 12th July, 1995, to substantiate his argument. The person who cleaned the bottle has also not been examined. He submitted that there is no sufficient evidence to show that the instrument with the help of which the samples were taken was properly cleaned or not. While drawing attention of this Court to the Public Analyst's report, he submitted that the sample was not examined by the Public Analyst himself. He had caused the said sample to be analysed through somebody. The Public Analyst or the person who analysed the sample has not been examined. There is no evidence to show as to exactly on which date the analysis was done and the report was prepared on a day other than the day on which the sample was received. Mr. Mehta has placed in service an unreported decision of this High Court rendered in Criminal Appeal No.374 of 1987 (State of Gujarat v. Ramniklal J. Vora & Ors.) on 30th May, 1996 and submitted that the benefit of doubt has rightly been given to respondents No.1 and 2. He further submitted that, if the report of the Public Analyst is perused, it does not specifically opine that the sample had ingredients which were injurious to human health, which rendered the sample incapable of human consumption and, therefore, reliance cannot be placed on such a report. In this regard, he had drawn attention of this Court to the decision of the Honourable Supreme Court in the case

of Delhi Municipality v. Kacheroo Mal, AIR 1976 SC 394. He further submitted that, if the detailed findings of the Public Analyst, as recorded in the report are considered, except siphonication value, all other tests are within the prescribed limits. Even the siphonication value is also very near to the prescribed limits and, therefore also, it cannot be said that the groundnut oil was adulterated to an extent which would be injurious to the health of human being. Mr. Mehta, therefore, urged that the appeal may be dismissed.

5. Mr. Parikh, learned advocate appearing for respondent No.2, has, broadly speaking, adopted the arguments advanced by Mr. Mehta. He, of course, has strongly agitated the validity of the sanction and urged that the appeal may be dismissed.

6. Mr. A.J. Desai, learned Additional Public Prosecutor appearing for respondent No.3, adopts the arguments advanced by Mr. Pranav G. Desai, learned advocate for the appellant.

7. This Court is taken through the material part of the evidence by both Mr. Pranav G. Desai as well as Mr. Mehta. The impugned judgment is also closely considered.

8. At the outset, it may be noted that the learned Magistrate, besides relying on defect in the sanction as well as non-compliance of section 13(2) of the Act, has relied on certain other circumstances also for recording the acquittal, namely, the defect in sampling and sealing.

9. Considering the question of consent, as envisaged under Section 20 of the Act, the consent is produced at Ex.48 on record of the trial Court. There is a specific averment that the consent was given after going through analysis report of the Public Analyst and other pertinent papers and documents, and the nature of the offence committed by the alleged offenders. It, therefore, cannot be said that the consent was given without application of mind. If the decision of the Honourable Supreme Court in the case of Suresh H. Rajput v. Bhartiben P. Soni (1996) 7 SCC 199 is seen, the same question was involved. In that case, the Honourable Supreme Court has reproduced the text of the consent letter in paragraph 6. If that is read in comparison to Ex.48, it can be found that it is ad-verbatim the same, except the name of the accused. In spite of the said consent letter, it has been observed that the said sanction was in accordance with law, although it was a

cyclostyled one and, therefore, that question is now set at rest by the said decision and it is, therefore, hereby held that the verdict of the learned Magistrate that the sanction was not valid was an error.

10. Now, coming to the question whether requirements of Section 13(2) have been properly complied with or not, so far as respondent No.1 is concerned, there cannot be any dispute in this regard. So far as accused No.2 is concerned, it may be noted that it is evident from the record that the copy of the report was sent along with notice under Section 13(2) of the Act within prescribed limits, at the address of respondent No.2 by registered post A.D. and the same is shown to have delivered by the postal authority to the addressee, as can be seen from the acknowledgement slip produced on record. The delivery of this was agitated upon by the defence before the learned Magistrate and the learned Magistrate has come to a conclusion that because the complainant in his deposition has not identified whether the signature appearing on the postal acknowledgement slip, Ex.54, is of accused No.2 or not, it cannot be said that delivery of the said letter is said to have been proved. And concluded that the mandatory requirement of Section 13(2) of the Act, therefore, cannot be said to have been complied with.

11. If we read the provision of Section 13, sub-section (2) of the Act, it runs as under :-

"13. Report of Public analyst- (1) ....

(2) On receipt of the report of the result of the analysis under sub-section (3) to the effect that the article of food is adulterated, the Local (Health) Authority shall, after the institution of prosecution against persons from whom the sample of the article of food was taken and the persons, if any, whose name, address and other particulars have been disclosed under Section 14-A, forward, in such manner as may be prescribed, a copy of the report of the result of the analysis to such person or persons, as the case may be, informing such person or persons that if it is so desired, either or both of them may make an application to the Court within a period of ten days from the date of receipt of the copy of the report to get the sample of the article of food kept by the Local (Health) Authority analysed by the Central Laboratory."

It is amply clear from a plain reading of sub-section (2) that it is expected of the Local Health Authority to forward a copy of the report of the result of analysis to the persons from whom the sample is taken and the persons, if any, whose names and addresses and other particulars have been disclosed by such person under Section 14-A of the said Act, informing such person/persons that if it is so desired, either, both or any of them may make an application to the Court within a period of 10 days from the date of receipt of the copy of the report to get the sample kept by the Local Health Authority analysed by the Central Laboratory. It is, thus, clear that the duty that is cast is only to the extent of forwarding the same. If the intention of the law maker is considered, it is only with a view to afford an opportunity to the accused persons to get the sample examined again by the Central Laboratory and, therefore, mere forwarding of the copy of the report cannot be said to be a complete compliance of the intention of the law makers in respect of Section 13(2) of the Act is the argument of Mr. Mehta, as against that of Mr. Desai. In the instant case, however, it appears that the learned Magistrate has slipped into an error by holding that because the complainant could not identify the signature of accused No.2, the delivery of the letter cannot be said to have been proved. In the view of this Court, when the letter was sent by Registered Post A.D. through a Government machinery, i.e. the Postal Department, and when the Postal Department has returned the acknowledgement slip bearing a signature, there would be a necessary presumption that the letter is delivered to the addressee and, therefore, it cannot be said that there is non-compliance of Section 13(2) of the Act, as the signature of accused No.2 is not identified by the complainant. When independent Government machinery is working and the services thereof are availed of, there is a necessary presumption that the machinery is working in accordance with rules and law and when it is sent by Registered Post A.D., the delivery thereof would necessarily be presumed to have been given to the addressee. The complainant cannot be expected to identify the signature of the accused when he has no direct dealing with him as was the case in the instance case, because accused No.2 has been brought to the book as warrantor whose name was given by accused No.1, from whom the sample was taken, under Section 14-A of the Act. Therefore, the objection that is raised by the defence and accepted by the learned Magistrate is a clear error of law. It cannot be said that the intention of the law makers of affording an opportunity to the accused of getting the sample examined by the Central Laboratory has

not been adhered to or complied with by the prosecution. Even subsequent conduct of accused No.2 indicates that had he any intention of getting the sample analyzed by the Central Laboratory, he could have and would have applied even at the time of the trial and, therefore, the finding of the learned Magistrate that requirements of Section 13(2) of the Act have not been complied with is erroneous and cannot be sustained.

12. Now, therefore, comes the question whether, on merits, the prosecution has been able to establish the case against the accused persons.

12.1 In this regard, it may be noted that the evidence of the complainant, at Ex.31, if perused, indicates that he had no personal knowledge about the cleaning of bottles in which the samples were taken. He did not have any information or knowledge as to who cleaned those bottles and when. It would, therefore, be a matter of doubt whether the bottles were really cleaned or not. When the bottles were shown to the Panch witness, it transpires from the evidence that the cork was closed and, therefore, in light of the decision of this High Court in the Case of Sudhirchandra B. Joshi v. Arvindkumar Naranbhai Patel and Others, Criminal Appeal No.1013 of 1988, delivered on 12th July, 1995, the requirements of Rule 14 cannot be said to have been complied with. In the said decision, it was observed that the person who cleaned the bottles was not examined and there was satisfactory evidence to show that the mandatory requirements were not complied with and, therefore, the benefit was given to the accused persons relying upon the decision of this High Court in the case of M.B. Risaldar v. Radheshyam, as reported in 1980(2) GLR 136. The facts of the present case are identical as can be seen from the deposition of the complainant.

13. As regards the argument of Mr. Mehta that the requirements of Rule 16(b) have not been shown to be properly complied with, there appears no substance because if the deposition of the witness is perused, he speaks of having folded the ends of the paper with which the samples were wrapped. Non-use of the words "neatly folded" cannot lead to an inference that they were not neatly folded. Notice can be taken of the fact that, if the ends were not neatly folded, the seal could not have been affixed properly, as has been found to have been done in the instant case.

14. Another aspect that requires to be considered is that the report of the Public Analyst, if perused,

indicates that the samples were received on 3rd June, 1983. They were caused to be analysed by the Public Analyst and the report was signed on 10th June, 1983 by the Public Analyst. It is not known as to who examined the samples and when. In light of the decision of this High Court in the case of State of Gujarat v. Ramniklal Jesang Vora and Others, Criminal Appeal No.374 of 1987. The possibility of the sample and the report getting mixed up cannot be ruled out when the sample is not analysed on the day on which it is received as the prosecution has not examined the person who analysed the sample. The benefit has, therefore, to go to the accused.

15. As regards the contention raised by Mr. Mehta that the detailed analysis indicates that the sample was nearly perfect except that the siphonication value was slightly outside the permissible limit and, therefore, it cannot be said to be adulterated, it is difficult to accept this argument. When it comes to the purity of eatables or edible articles, the standards are supposed to be perfectly maintained. No compromise can be made or relaxation can ever be allowed so far as prescribed standards in respect of quality of edible items are concerned.

16. Last but not the least, reliance is placed on the decision of the Supreme Court in the case of Delhi Municipality v. Kacheroo Mal, AIR 1976 SC 394, wherein it has been observed that mere addition of foreign matter in the substance under inspection or the substance under inspection not conforming to the standards is not sufficient to hold the accused guilty under the provisions of this Act unless it is shown that the substance in question was so adulterated that it was rendered unfit for human consumption. However, having gone through the decision, it is difficult to accept the argument advanced on behalf of respondent No.1. It is clear from a plain reading of the said decision that, in that case, the substance was found to be insect infested. It was then observed that mere insect infestation is not sufficient to hold an article as adulterated as defined under the Act for the reason that expression "insect infested" refers to the quality of the article and furnish the indicia for presuming the article to be unfit for human consumption. It is observed that it is desirable that Public Analyst should express his opinion on all relevant points with reference to the particular sub-clause or sub-clauses of Section 2(i) of the Act. This indicates that it is considered desirable that the Public Analyst should express his opinion as to

wholesomeness of the substance in question, but where such opinion is not given, adverse inference cannot be drawn that because it is not certified to be unfit for human consumption, it is fit for human consumption. The argument advanced on behalf of respondent No.1, therefore, cannot be accepted.

17. In view of above, it is amply clear that because the sampling procedure was not properly followed and because implicit reliance cannot be placed on the Public Analyst's report for the reasons stated above, the accused persons could not have been convicted. The decision of the learned Magistrate impugned in this appeal, acquitting the accused cannot, therefore, be said to be erroneous.

18. This Court while hearing an acquittal appeal can interfere in the verdict of the trial Court only if it is shown that the verdict is manifestly erroneous and palpably unsustainable or perverse. In view of the above discussion, it cannot be said that the decision arrived at by the learned Magistrate is such that no other conclusion except conviction of the accused persons could have been arrived at or that the view adopted by the trial Magistrate is an impossibility. The appeal, therefore, cannot be positively entertained and, therefore, deserves dismissal.

19. In the result, this appeal fails and is dismissed.

[A.L. DAVE, J.]
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